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### REMARKS

The above Amendments and these Remarks are in reply to the final Office Action mailed September 8, 2006. Claims 1-69 and 77 were pending in the Application prior to the outstanding Office Action. Claims 1, 7, 9, 20, 26, 37, 43, 58, 69 and 77 have been amended. The amendment to claim 1, 7, 9, 26, 43, 58 and 77 are supported in the specification as filed at least at paragraph [0022]. Claims 1-69 and 77 remain for the Examiner's consideration. Reconsideration and withdrawal of the rejections are respectfully requested.

### ABSTRACT

The Abstract was objected to because it includes phrases which can be implied.

The Abstract has been amended as detailed above. Accordingly, Applicants respectfully request that the objection to the Abstract be withdrawn.

### CLAIM REJECTIONS UNDER 35 U.S.C. § 101

Claims 58-69 and 77 are rejected under 35 U.S.C. §101 as allegedly being drawn to non-statutory subject matter.

The Applicant has amended claims 58 and 77 introducing the language "adapted to" in order to make clear that the Applicants are directing the claim to the device and not the human subject. In view of the above, Applicants respectfully request that the Examiner reconsider and withdraw the § 101 rejections.

### CLAIM REJECTIONS UNDER 35 U.S.C. § 112

Claims 1-6 and 77 are rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter.

The Applicant has amended Claim 1 and 77, correcting grammatical errors including the singular form of vertebra. The Applicant has also inserted antecedent basis for 'the action'. The Examiner is thanked for her careful reading of the claims. In view of the above, Applicants respectfully request that the Examiner reconsider and withdraw the § 112 rejections.

#### CLAIM REJECTIONS UNDER 35 U.S.C. § 102

Claims 1-9, 13-26, 30-43, 47-58 and 62-77 are rejected under 35 U.S.C. §102(b) as allegedly being anticipated by U.S. Patent No. 5,415,659 to Lee et al. (hereinafter "*Lee*").

Claims 1, 7, 9, 26, 43 and 77 have been amended to introduce the limitations that the spacer has "a distal end with a curved surface formed about an axis and a proximal end that is planar, wherein the axis is parallel to the plane of the proximal end". Since *Lee* does not disclose a spacer with a "distal end with a curved surface formed about an axis and a proximal end that is planar, wherein the axis is parallel to the plane of the proximal end", *Lee* does not disclose in as much detail all elements of Claims 1, 7, 9, 26, 43 and 77.

Claims 2-6, 8, 13-25, 30-42 and 47-57 all directly or indirectly depend from independent Claims 1, 7, 9, 26, 43 and 58, and are therefore believed patentable for at least the same reasons as independent Claims 1, 7, 9, 26, 43 and 58 and because of the additional limitations of these claims.

In view of the above, Applicants respectfully request that the Examiner reconsider and withdraw the § 102(b) rejections.

#### CLAIM REJECTIONS UNDER 35 U.S.C. § 103

Claims 10-12, 27-29, 44-46 and 59-61 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 5,415,659 to Lee et al.

Claims 10-12, 27-29, 44-46 and 59-61 all directly or indirectly depend from independent Claims 1, 7, 9, 26, 43 and 58, and are therefore believed patentable for at

least the same reasons as independent Claims 1, 7, 9, 26, 43 and 58 and because of the additional limitations of these claims.

In view of the above, Applicants respectfully request that the Examiner reconsider and withdraw the § 103(a) rejections.

### CONCLUSION

In light of the above, it is respectfully requested that all outstanding rejections be reconsidered and withdrawn. The Examiner is respectfully requested to telephone the undersigned if he can assist in any way in expediting issuance of a patent.

No fee is believed due in connection with this paper. However, the Commissioner is authorized to charge any underpayment or credit any overpayment to Deposit Account No. 06-1325 for any matter in connection with this response, including any fee for extension of time, which may be required.

Respectfully submitted,

Date: 11/2/06

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